* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RFA Nos.771/2010, 806/2010, 807/2010, 808/2010, 809/2010 & 810/2010**

% **22nd November, 2011**

1. **RFA No.771/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

2. **RFA No.806/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

3. **RFA No. 807/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

4. **RFA No.808/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

5. **RFA No.809/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

6. **RFA No.810/2010**

KRISHNA ENGINEERING WORKS & ORS. ..... Appellants
Through: Mr. S.K. Bhattacharaya, Advocate with Mr. Niraj Bobby Paonam, Advocate.

versus

CROMPTION GREAVES LTD. ..... Respondent
Through: Mr. Sanjeev Sagar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. These six appeals impugn the judgments of the trial Court dated 24.7.2010. By these six judgments dated 24.7.2010, the leave to defend applications filed by the appellant No.1/defendant No.1 were dismissed and the six suits for recovery filed by the respondent/plaintiff on the basis of the dishonoured cheques were decreed.

2. The facts of the case are that the respondent/plaintiff supplied electric motors under different invoices to the appellant No.1/defendant No.1 as under:-

Invoice No.	Date	Amount
AK-1608586	29.11.1999	₹1,18,227.20/-
AK-1608648	30.11.1999	₹ 3,54,681.60
AK-1609328	5.12.1999	₹ 1,77,340.80/-
AK-1609223	5.12.1999	₹2,85,916.80/-
AK-1609327	5.12.1999	₹ 3,54,681.60/-
AK-1609444	10.12.1999	₹ 2,36,454.40/-

3. With respect to aforesaid invoices, the respondent/plaintiff claimed that cheques were issued and which cheques were dishonoured. These cheques are:-

Sr. No.	Cheque No.	Date	Amount
1.	921304	17.12.1999	₹1,18,227.20/-
2.	921303	18.12.1999	₹3,54,681.60/-
3.	921313	20.04.2000	₹ 1,77,340.80/-
4.	342720	20.04.2000	₹2,85,916.80/-
5.	921312	20.04.2000	₹ 3,54,681.60/-
6.	921314	18.12.1999	₹ 2,36,454.40/-

4. The subject suits for recovery under Order 37 of Code of

Civil Procedure, 1908 (CPC) were therefore filed on the basis of dishonoured cheques.

5. The appellants after service of summons of judgment, filed an application for leave to defend inter alia stating that the on account payments have been made towards the motors supplied and the parties had a long period dealings as shown in the statement of account maintained. It was also pleaded that cheques were not to be presented unless a go ahead was given by the respondent/plaintiff that the customers in whose premises the motors were installed with the machinery were satisfied with the working of the machinery. It was prayed that unconditional leave to defend be granted as amounts which are claimed are really amounts on the basis of continuous dealings as shown in a running account and various payments have been made towards different bills including towards the subject invoices. It is argued that details of the transactions are contained in the statement of account filed, and which statement of account has not been disputed by the respondent/plaintiff although various adjournments were taken before the trial Court by the respondent/plaintiff for filing of its own statement of account.

6. The statement of account which is relied upon on behalf of the appellant No.1/defendant No.1 is as under:-

“STATEMENT OF ACCOUNTS OF M/S CROMPTON GREAVES LIMITED WITH M/S. KRISHNA ENGINEERING WORKS, W.E.F. 1-4-99 TO 19-11-2003.

Date	Particulars	Dr. (₹)	Cr.(₹)
27-07-99	By Bill No.3834		2,38,264.00
05-09-99	By Bill No.5367		2,56,664.00
08-09-99	To Cheque No.968378	2,38,264.00	
09-09-99	By Bill No.5561		1,53,398.40
12-09-99	By Bill No.5872		1,02,665.60
12-09-99	By Bill No.5873		51,332.80
17-09-99	To Cheque No.912362	94,800.00	
17-09-99	To Cheque No.912363	94,800.00	
17-09-99	To Cheque No.912364	95,400.00	
27-09-99	To Pay order No.086751	95,000.00	
08-10-99	By Bill No.6691		1,42,958.40
08-10-99	By Bill No.6692		47,652.80
22-10-99	To Cheque No.917067	47,652,80	
24-10-99	To Cheque No.912367	1,53,998.40	
18-11-99	To Dr. Note (excess freight)	28,974.00	
18-11-99	To L/C Dr. by Bank	4,10,662.40	
22-11-99	To Cheque No.917095	1,13,984.40	
23-11-99	By Bill No.8355		4,72,908.80
29-11-99	By Bill No.8586		1,18,227.20
30-11-99	By Bill No.8648		3,54,681.60
05-12-99	By Bill No.9327		3,54,681.60
05-12-99	By Bill No.9328		1,77,340.80

05-12-99	By Bill No.9223		2,85,916.80
05-12-99	By Bill No.9224		2,38,264.00
10-12-99	By Bill No.9444		2,36,454.40
18-12-99	To Cheque No.342721	2,38,264.00	
29-01-00	To L/C Dr. by Bank	4,72,908.80	
29-03-00	To Pay order No.382542	4,00,000.00	
29-03-00	To Pay order No.382543	1,45,000.00	
	To Amount of 5 Nos. Alternator received without AVR's without which Alternators are of no use	2,95,568.00	
	To amount of 1 No. Alternator Sr. No.YGAG 0284 sent back to factory vide G.R. No.03074 Dt.13-01-01 to Transport Corporation of India	68,500.00	

7. On the basis of the aforesaid statement of account, it is argued that after the raising of the disputed bills with respect to the motors, payments totaling about ₹15,51,740.80/- have been made and which are reflected in the last four entries in this statement of account. It is therefore argued that really the issue is of reconciliation accounts and therefore the appellant No.1/defendant No.1 is entitled to leave to defend to show during the trial of the suit that the respondent/plaintiff is not entitled to the suit amounts.

8. Learned counsel for the appellants has also drawn my attention to the affidavit filed in support of leave to defend application,

and para 6 thereof which reads as under:-

> "6. That after receiving the confirmation from the party concern that ordered goods have been received necessary payment of the above mentioned bill on account has been made, with the condition that the plaintiff will be responsible to refund the due payment if the supplied goods will not be worked properly." (underlining added)

It is argued that there is clear cut averment of on account payment having been made in this paragraph and which is corroborated by the statement of account.

9. A reference to the impugned orders shows that the trial Court has neither referred to the statement of account filed by the appellants/defendants as reproduced above, and nor has referred to para 6 of the affidavit in support of leave to defend applications which again has been reproduced above.

10. The appellant No.1/defendant No.1 argued that once payments have been made totaling to ₹15,51,740.80/-, and which payments are after the disputed invoices, surely, appellants are entitled to leave to defend with respect to the cheques which totaled to ₹15,27,308/-.

11. The principles with respect to grant of leave to defend are now well-settled. The celebrated decision of the Supreme Court, in this regard, is the decision in the case of ***M/s. Mechalec Engineers and Manufacturers Vs. M/s. Basic Equipment Corporation, AIR 1977 SC 577*** and in which the following principles have been laid down:-

> "(a) If the defendant satisfied the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to

unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shows, such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

12. In my opinion; once the appellant No.1/defendant No.1 showed payments after raising of the disputed bills of about ₹15,51,740.80/-, and it was also shown that there was a running statement of account, and when taken alongwith the fact that respondent/plaintiff did not file its statement of account and for which time was taken before the trial Court on 20.9.2008 and 30.9.2008; the present case falls in clause (b), or in any case clause (c), of the judgment in ***M/s. Mechalec Engineers (supra)*** because the fact of

the payments in the statement of account of appellant No.1/defendant No.1 and the non-filing of a statement of account by the respondent/plaintiff shows that the appellants have a good defence or in any case such a defence if not immediately clear, is such that the appellants would be entitled to establish during the course of trial of the suit.

13. In view of the above, the appeals are accepted. Impugned judgments dismissing the leave to defend applications and decreeing the suit are set aside. The appellants are granted unconditional leave to defend the suit. It is however directed that the trial Court will make an endeavour to dispose of the suit as expeditiously as possible, and to the extent possible within a period of one and half years of filing of the written statement by the appellants/defendants, and which shall now be filed before the trial Court within a period of two weeks of the first date fixed before the competent Court by the District & Sessions Judge, Delhi. The trial Court will also not grant more than three opportunities to either of the parties to complete their evidence. If unnecessary adjournments are asked for by either of the parties, the trial Court will impose heavy costs on the party seeking such unnecessary adjournments. Appeals are accordingly disposed of, leaving the parties to bear their own costs.

14. Parties to appear before the District & Sessions Judge, Delhi on 21.12.2011, and on which date the District & Sessions Judge will mark the suits to a competent Court for disposal in accordance with law.

Bank guarantees given in these appeals by the appellants/defendants vide order dated 30.11.2010 will accordingly stand discharged, however, subject to the undertaking to be filed in this Court in four weeks by the appellants that in case the appellants/defendants fail in the suit, these bank guarantees will within the period as granted by the trial Court after the final judgment be again furnished in satisfaction of the decree, if any which may be passed in favour of the respondent/plaintiff.

VALMIKI J. MEHTA,J

NOVEMBER 22, 2011
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